IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6373 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MARDIA CHEMICALS LIMITED

Versus

RAMSAGARSINGH BALWANTSINGH PARIHAR

Appearance:

1. Criminal Misc.Application No. 6373 of 2002

MR AD SHAH for Petitioner No. 1-8

MR VH BRAHMBHATT for Respondent No. 1

MR AD OZA, PP WITH MR PR ABICHANDANI, APP for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 09/05/2003

C.A.V. JUDGEMENT

This petition under Sec.482 of the Code of Criminal Procedure has been filed for quashing and setting aside the complaint filed by the original complainant in the Court of Addl. Principal Judge, City Sessions Judge, Ahmedabad, registered as Special Case No.8 of 2002 and the order passed therein.

2. The facts in short are that a complaint was filed by the complainant directly into the Court of learned Addl. Principal Judge and Special Judge, City Sessions Court, Ahmedabad, being Special Case No.8 of 2002 for the offences punishable under Secs.7,8,9,10,12 and 13(1)(2) of the Prevention of Corruption Act and under Secs.405, 409, 420, 34 and 114 of Indian Penal Code against the present petitioners-original accused Nos.1 to 8 and some other suspected accused alleging that the accused Nos.1 to 8, who are the Limited Companies and their Directors and responsible officers of different banks and financial institutions, in collusion with each other, obtained amounts and cheated and/or misappropriated various banks and financial institutions to the tune of Rs.526.96 crores which ultimately resulted into misappropriation or cheating on the basis of false and forged documents. A table to that effect has been given by the complainant in para 3 of the complaint. Extracts of the same are as under:

Sr. No.	Name of the Company	Name of bank/ financial institution	Year of obtaining amts.	Amount obtained (Rs.in crores)
1.	Mardia Chemicals	Bank of India	1998	89.99
2.	Mardia Chemicals	Bank of Baroda	1998	70.84
3.	Mardia Steels	Bank of India	1997	23.81
4.	Mardia Chemicals	Corporation Bank	1999	12.31
5.	Mardia Chemicals	I.F.C.I. Ltd.	2000	171.73
6.	Mardia Chemicals	Union Bank of India	2000	36.46
7.	Mardia Chemicals	U.T.I.	1999	19.94
8.	Mardia Chemicals	I.F.C.I.Ltd.	1999	89.78
9.	Mardia Leasing & Financing Services	Dena Bank	1998	12.10

The learned Special Judge vide order dated 2-9-2002 passed the following order in the said complaint:

"ACB, Ahmedabad, to investigate U/s 156(3) of

Cri.Pr.Code."

Hence, the present petition has been filed under Sec.482 of the Code of Criminal Procedure for quashing.

3. Heard Mr.A.D.Shah, learned counsel for the petitioners, Mr.Y.H.Brahmbhatt, learned counsel for the respondent No.1-original complainant and Mr.A.D.Oza, learned Public Prosecutor with Mr.P.R.Abichandani, learned APP for the respondent No.2-State. Written submissions have been produced on record by Mr.A.D.Shah, learned counsel for the petitioners. On behalf of opponent No.1-original complainant, written arguments have been submitted by Mr.Brahmbhatt.

4. It is argued by Mr.A.D.Shah that the complaint is silent about the source of information of alleged commission of such a serious offence and hence, the correctness and legality of the order passed by the learned Special Judge be examined. It is further argued by him that the complainant has not approached the Officer in-charge of Police station with the information and the whole complaint does not say as to why the complainant has not approached the concerned Police Station and has directly filed the complaint before the Court. It is further argued that the impugned order passed by the learned Special Judge reflects that he is not prima facie satisfied with the commission of cognizable offence. It is further argued that order under Sec.156(3), Cr.P.C. attaches much significance and hence, learned Special Judge ought to have taken great care and caution while directing investigation under Sec.156(3). According to him, the impugned order passed by the learned Special Judge is a cryptic order and without application of mind. If the facts prima facie disclose commission of cognizable offence, then only Court can order for commencement of investigation. In this regard, he has relied upon the case of State of Karnataka Vs. Arun Kumar Agarwal, AIR 2000 S.C. page 411.

4.1 It is submitted by Mr.Shah that Mardia Chemicals Ltd. is dealing in manufacture of dyes and dyes-intermediates and started its operations in 1987 as a Public Limited Company having a gross fixed asset of more than 1000 crores. Initially it was registered as "Allied Industrial Technologists Pvt. Ltd." in December, 1979. The turn over of the Company increased from Rs.1400 lakhs in 1990-91 to Rs.28000 lakhs in 1995-96 and it recorded a growth in Gross Fixed Assets from Rs.5200 lakhs in 1991-92 to Rs.94600 lakhs in 1997-98. However, due to severe cyclone, since the Company's operations suffered a major

set back in June 1996, its plant at Mardia Nagar was closed in July, 1996. It is further submitted that in the Special Leave Petition filed by the Company, the Supreme Court appointed National Environment Engineering Research Institute and central pollution Control board to carry out the inspection of the units and pursuant to the reports of the Committee ordered reopening of all the plants. It is further submitted that the Company suffered huge loss due to non-production to the tune of Rs.56.50 crores for the year 1996-97 and ultimately the Company became a sick unit. It is further submitted that in Appeal No.55 of 2002 filed against the order dated 22-2-2002 passed by the BIFR, the Appellate Authority for Industrial and Financial Reconstruction, New Delhi set aside the order dated 22-2-2002 and remanded the matter for a redecision. Bank of India, Union Bank of India, HSBC, ICICI, IDBI, Corporation Bank and national Insurance Company Ltd. were respondents in the appeal. It is further submitted that from the income being derived from the operations of the company, amount of Rs.3.00 crores were made to Bank of Baroda.

4.2 As far as the allegations made in the complaint of non-payment of Rs.526.96 crores to different institutions obtained on false pretext of business of the Company is concerned, it is argued by Mr.Shah that the amounts advanced to different companies by those financial institutions cannot be said to be for the business of the Company and when no grievance has been made by any financial institution of having made any false representation by the company to part with the property, the ingredients of offence punishable under Secs.409 and 420 of IPC are not made out. According to him, general allegations have been made of rampant corruption in administration and without there being any commission of offence under Prevention of Corruption Act, the impugned order has been passed by the learned Special Judge calling upon the ACB to start investigation. It is submitted that no notice for any alleged conduct of criminal nature has been served on the Company by any of the financial institutions. It is further submitted that in the complaint filed by the complainant, though names of various banks and financial institutions have been included, names of ICICI and IDBI Home are not included which means that ICICI and its management have made the complainant as an instrument in filing such a complaint. Hence, it is submitted that the complaint being motivated, requires to be quashed and the order being cryptic, requires to be set aside. He has placed reliance upon various judgments which will be discussed at a later stage.

5. Whereas Mr.V.H.Brahmbhatt, learned counsel on behalf of opponent No.1-original complainant and learned Public Prosecutor for the State have objected granting of this petition. It is submitted by Mr.Brahmbhatt that opponent No.1 is a social worker and for filing complaint against the company, complainant need not be a shareholder of the company or requires to be in its employment. He has relied upon the case of A.R.Antulay Vs. R.S.Nayak, AIR 1984 S.C. page 718. It is contended that since an offence under Sec.154 has been registered by ACB, said section is operating against the petitioners and statement of complainant has been recorded by the ACB authorities on 19-9-2002. It is further contended that for passing order under Sec.156(3), learned Judge is not bound to give reasons. It is further contended that the complaint can be quashed only in rarest of the rare cases and if it is quashed, then it would amount to acquitting the accused without trial or investigation. It is further contended that the petitioners have admitted in their pleadings of having obtained amounts as stated in the complaint when they themselves have mentioned that only Rs.3.00 crores have been paid out of Rs.526.96 crores and hence, offence is committed in not making the repayment. It is further contended that none of the petitioners-accused has filed any affidavit, but affidavit has been filed by one Mr.K.B.Kapadia in the capacity of Company Secretary of Mardia Chemicals Ltd. who is not an accused in this case and no documents as to his appointment as Company Secretary have been produced along with the affidavit and since he is not a Company Secretary in other Companies, i.e. Mardia Chemicals Ltd., Mardia Leasing and Financing Services Ltd. and Mardia Steels Ltd., he has no legal right to affirm the affidavit and hence, this petition is required to be dismissed summarily.

6. The first point to be dealt with by this Court is whether the complaint prima-facie discloses the ingredients of offence or not. For that, what is required to be seen is the complaint and the documents forming part of it. It is to be noted that the complainant who has filed the complaint has no personal knowledge but has filed the compliant based on the report which is annexed with the complaint. Therefore, this point has to be borne in mind while deciding this matter. In this view of the matter, one cannot expect all details regarding the ingredients of offence in the complaint filed by such a complainant. It is not in dispute that present complainant is entitled to file the complaint in view of the case reported in AIR 1984 S.C. 716 more particularly para 35 wherein after discussing at length in paras 4 and 6, the Apex Court has held in para 35 as under:

"Having examined the matter from all the different angles, we are satisfied that the conclusion reached both by the learned Special Judge and the Division Bench of the Bombay High Court that a private complaint filed by the complainant was clearly maintainable and that the cognizance was properly taken, is correct."

In view of the above, complainant is entitled to file the present complaint and since he has no personal knowledge, Court cannot expect much more material from him in form of FIR.

7. On this point, Mr.Shah, learned counsel for the petitioners has drawn my attention towards the case reported in AIR 1982 S.C. 949. It was held by the Apex Court in that case at head note "A" as under:

"Constitution of India, Art.226--Nature and scope of proceeding under--F.I.R. not disclosing commission of cognizable offence--High Court justified in quashing investigation."

8. He has also drawn my attention towards the case reported in 1992 S.C. 604 wherein it has been held by the Apex Court in paras 31 and 32 as under:

"The condition which is sine qua non for recording a First Information Report is that there must be an information and that information must disclose a cognizable offence."

9. He has also drawn my attention towards another case reported in AIR 2000 S.C. 411. It has been held by the Apex Court in para 16 of that judgment as under:

"The acts of persons will not be subject of criminal investigation unless a crime is reported to have committed or reasonable suspicion thereto arises On mere conjecture or surmise as a flight of fancy that some crime might have been committed, somewhere, by somebody but the crime is not known, the persons involved in it or the place of crime unknown, cannot be termed to be reasonable basis at all for starting a criminal investigation. However, condemnable be the nature or extent of corruption in the country, not all acts could be said to fall in that category."

10. My attention was drawn towards another case reported in JT 2003(1)SC 418 more particularly towards para 19 which reads as under:

> "The question which arises is that where the complaint or the FIR does not disclose commission of a cognizable offence, whether the same can be quashed at the initial stage" This question was examined by this Court in State of West Bengal & Ors. V. Swapan Kumar Guha & Ors., AIR 1982 SC 949 and it was held that the First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. It is surely not within the province of the police to investigate into a report (FIR) which does not disclose the commission of a cognizable offence and the Code does not impose upon them the duty of inquiry in such cases. It was further held that an investigation can be quashed if no cognizable offence is disclosed by the FIR."

11. In short, the law laid down in the aforereferred judgments relied upon by the learned counsel for the petitioners is that if complaint does not disclose any prima facie ingredients of the offence in question, court cannot order for investigation and complaint can be quashed at that stage.

12. It has been further argued by the learned counsel for the petitioners no order under Sec.156(3) can be passed upon the complaint in question. Mr.Shah has taken me through Secs.156 and 157 of Chapter 12 of Code of Criminal Procedure. It is not in dispute that Sec.156 confers power upon the Police Officer to investigate any cognizable offence while Sec.156(3) authorizes the Magistrate to order such an investigation hereinabove referred to. Whereas Sec.157 deals with commencement of investigation. However, these are all based on disclosure of cognizable offence. This means that order under Sec.156(3) can be passed on a complaint wherein factual averments constitute commission of cognizable offence.

13. It has been further argued by the learned counsel for the petitioners that the order passed by the learned Special Judge directing investigation by ACB under Sec.156(3) is inherently illegal as there is no application of mind as to the disclosure of commission of cognizable offence necessitating commencement of investigation. As I

have discussed earlier, this is required to be evaluated keeping in mind the factual aspects and the fact that the complainant has no personal knowledge. In my view, the complainant is legally entitled to do file the complaint for the purpose of putting the machinery in motion.

14. Keeping in mind the law laid down by the Apex Court, I have gone through the complaint and the documents annexed with it forming part of complaint as well as written submissions and affidavits filed by the parties and I am of the opinion that the impugned complaint prima facie discloses the offence in question and as argued by the learned counsel for the original complainant, Mr.V.H.Brahmbhatt, before passing the impugned order, learned Special Judge has gone through the complaint and documents annexed with it and has afforded opportunity of being heard to the parties. Hence, it cannot be said at this stage that the order passed by the learned Special Judge is as a result of non-application of mind and not a reasoned order. When the complaint and documents forming part of complaint disclose the prima facie offence under the Prevention of Corruption Act, learned Special Judge has got jurisdiction to pass the order for investigation by ACB and hence, the impugned order is just, legal and proper. Therefore, the learned counsel for the petitioners will not be entitled to the benefits out of the judgments relied upon by him and I do not find any substance in the above points raised by him.

15. The next point raised by the learned counsel for the petitioners is that complaint in question does not disclose the ingredients of Secs.405 and 415 of Indian Penal code in view of the facts narrated by the complainant in the complaint. It has been further argued by him that obtaining loan from different banks and financial institutions by accused Nos.1 to 8 by executing documents and non-payment thereof cannot attract the provisions of Secs.405 and 415 of IPC. In this connection, he has relied upon the case reported in JT 2001(9) SC 151 wherein it has been held by the Apex Court at head note (a) as under:

> "(a) Sections 405, 406--Criminal breach of trust--Necessary ingredient--A mere breach of trust without fraudulent intention--If an offence and punishable. Held that every breach of trust is not an offence. breach with necessary mens rea gives rise to criminal prosecution."

16. On a perusal of the complaint and the documents annexed with it, it appears that it is not a simple loan transaction which ultimately turned into non-payment.

However, the facts disclosed are that the present petitioners have obtained amounts running into Rs.526.96 crores on the basis of various alleged fraudulent documents from various banks and financial institutions with the connivance of their officials and no repayment worth the name except an amount of Rs.3.00 crores has been made. These amounts have been obtained by the petitioners during the period ranging from 1998 to 2000 and admittedly as has been averred by the petitioners in the affidavit that since the Company suffered huge loss in the year 1996-97, it approached BIFR and against the order of BIFR, appeal was preferred. During that period, petitioners managed to get huge amounts as aforesaid. In this view of the matter, I am unable to accept the arguments advanced on behalf of the petitioners that it is only a loan transaction which turned into non-payment. Therefore, the petitioners will not be entitled to the benefits out of the abovereferred judgment relied upon by their counsel.

17. On the point of quashing, Mr.A.D.Shah has relied upon the judgment reported in AIR 1996 SCC (Cri) 1045 wherein it has been held by the Apex Court at head note "A" as under:

> "Criminal Procedure, 1973--S.482--Quashing of complaint--When justified--Act constituting both civil and criminal wrong--Civil suits for recovery of dues compromised on receiving payments from the companies concerned--Even if offence of cheating is prima facie constituted, compromise decree passed in such suits would amount to compounding of offence of cheating--Delay in completing investigation--No action taken against the erring officials despite allegation made against them in the FIRs--Held, in the circumstances of the case, the High Court was justified in quashing the complaint--Penal Code, 1860, Ss.405, 420, 468 and 471."

18. He has also relied upon JT 2003(1) S.C. 172 wherein it has been held by the Apex Court that when there is no dishonest misappropriation, section 403 would not be attracted. It has also been held by the Apex Court in that case that since the basic ingredients of the alleged offence have not been satisfied, issue of summons to appellants were not warranted and hence, appellants cannot be subject to any trial for the alleged offences.

19. He has also relied upon AIR 1989 S.C. 2222. It has been held by the Apex Court in paras 4,5 and 6 of the said case as under:

"the allegations made either in the FIR or in the charge-sheet did not show that the bank employees of the client had acted dishonestly, that is to say, acted with a deliberate intention to cause wrongful gain or wrongful loss, nor did the allegations constituted any offence of cheating or forgery. At the most there was some delay in making relevant entries. Since the FIR did not contain any definite accusation, it amounted to an abuse of the process of the Court. The criminal proceedings were therefore liable to be quashed in exercise of powers under S.482, Cr.P.C."

20. There cannot be any dispute regarding the principles laid down by the Apex Court in the aforereferred judgments. As I have discussed earlier, the complaint and the documents forming part of complaint coupled with the acts of the petitioners in connivance with the officers of the bank and financial institutions disclose the dishonest intention of the petitioners and since the ingredients of offence in question is prima-facie satisfied, it cannot be said that Sec.403 or Sec.415 will not be attracted in this case.

21. Learned Public Prosecutor, Mr.A.D.Oza, on the other hand, has drawn my attention towards the case reported in (1994) 2 Supreme Court Cases 277 more particularly towards head note which reads under:

"Criminal Procedure Code, 1973--S.482--Inherent power under, to quash FIR when cannot be exercised--Allegations in FIR disclosing commission of a cognizable offence--Several aspects of the FIR still to be investigated by the police--Held, High Court erred in quashing the FIR--At that stage the High Court could not go into the question whether offences alleged in the FIR were made out or not--Statutory power of police to investigate cannot be interfered with in exercise of inherent power by High Court--Approach of the High Court in treating the whole matter as though it was an appeal against conviction not proper. (para 8)"

22. Having regard to the above circumstances of the case, the law is very clear on the subject that if complaint discloses the prima-facie ingredients of offence in question, complaint cannot be quashed. As per the judgment relied upon by the learned Public Prosecutor, Court could not go into the question as to whether the

offences alleged in the FIR were made out or not especially when several aspects of the FIR are to be investigated by the police. It has also been held by the Apex Court statutory power conferred upon the police cannot be interfered with by exercising inherent power by the High Court. The Apex Court has held improper the approach of the High Court in treating the matter as of an appeal against the conviction.

23. Heavy reliance is placed on the aforesaid observations of the Apex Court in the judgment relied upon by the learned Public Prosecutor. Reliance is also placed on the decision of the Apex Court in the case reported in AIR 1999 Supreme Court 1044. It has been held in para 6 of the said case as under:

> "At the outset there cannot be any dispute with the proposition that when allegations in the F.I.R. do not disclose prima facie commission of a cognizable offence, then the High Court would be justified in interfering with the investigation and quashing the same as has been held by this Court in Sanchaita Investment's case, (1982) 1 SCC 561: (AIR 1982 SC 949). In the case of State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: (1992 AIR SCW 237), this Court considered the question as to when the High Court can quash a criminal proceeding in exercise of its powers under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution of India and had indicated some instances by way of illustrations, though on facts it was held that the High Court was not justified in quashing the first information report. This court held that such powers could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. But as an illustration several circumstances were enumerated. Having said so, the Court gave a note of caution to the effect that the power of quashing the criminal proceedings should be exercised very sparingly with circumspection and that too in the rarest of rare cases, that the Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an

> arbitrary jurisdiction on the Court to act according to its whim or caprice. It is too well settled that the first information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the Court and at that stage it is not possible for the Court to shift the materials or to weigh the materials and then come to the conclusion one way or the other. In the case of State of U.P. v. O.P. Sharma (1996) 7 SCC 705: (1996 AIR SCW 1229), a three-Judge Bench of this Court indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 or under Articles 226 and 227 of the Constitution of India, as the case may be and allow the law to take its own course. The same view was reiterated by yet another three-Judges Bench of this Court in the case of Rashmi Kumar v. Mahesh Kumar Bhada, (1997)2 SCC 397, where this Court sounded a word of caution and stated that such power should be sparingly and cautiously exercised only when the Court is of the opinion that otherwise there will be gross miscarriage of justice. The court had also observed that social stability and order is required to be regulated by proceeding against the offender as it is an offence against the society as a whole."

24. Keeping in mind the law laid down by the Apex Court on the subject, I have evaluated the evidence on record namely, the complaint and the documentary evidence enclosed with the complaint together with the arguments advanced by the learned counsel for the respective parties. I am of the opinion that since the complaint discloses the ingredients of the offences in question more particularly offence of Secs.405 and 415 and offence under the Prevention of Corruption Act, the learned Special Judge has passed the order of investigation on going through the same and after applying his mind by affording an opportunity of being heard and, therefore, it cannot be said that order passed by the learned Special Judge is without jurisdiction or without application of mind. Merely because it has not been disclosed in the order, one cannot jump at this stage in saying that the learned Special Judge has not applied his mind while passing the order. It is to be noted that the offences in question are not against any individual but against the nation wherein petitioners were able to raise

huge amounts running into crores of rupees from various banks and financial institutions in collusion with their officers, after the Company became sick on sustaining huge loss, on production of alleged fraudulent documents. It is also required to be noted that the petition has been affirmed by a person who is not an accused before this Court and this being criminal offence, he is not entitled to file the affidavit on behalf of all companies and the accused persons.

25. Considering the entirety of the circumstances narrated hereinabove, I am prima-facie satisfied that the complaint and documents annexed with the complaint disclose the ingredients of offences alleged against the petitioners and hence, the order passed by the learned Special Judge in ordering investigation under Sec.156(3) of Cr.P.C. by ACB is eminently just and proper and is not required to be interfered with at this stage. Hence, this petition is required to be rejected.

26. This petition is hereby rejected. Rule is discharged. Interim relief granted earlier stands vacated.

27. The observations by this Court in this judgment being made for the purpose of deciding this petition, same shall not prejudice the parties in investigation and in trial.

(R.P.DHOLAKIA,J.)

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Further Order

After pronouncement of the order, Mr.Saurin Shah for Mr.A.D.Shah, learned counsel for the petitioner requests that since the petitioners would like to approach the higher forum, interim relief granted earlier by this Court be continued for a period of six weeks. Looking to the facts and circumstances, interim relief granted by this Court (Coram:D.H.Waghela,J.) vide order dated 27-9-2002 passed in this matter is ordered to be continued for a period of six weeks to enable the petitioners to approach the Apex Court.

(R.P.DHOLAKIA,J.)

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